

County of Santa Clara

Department of Planning and Development

County Government Center, East Wing
70 West Hedding Street, 7th Floor
San Jose, California 95110



	Planning Office	Development Services Office	Fire Marshal Office
Phone:	(408) 299-5770	(408) 299-5700	(408) 299-5760
Fax:	(408) 288-9198	(408) 279-8537	(408) 287-9308

April 3, 2009

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Santa Clara County Comments to the Municipal Regional Permit Revised Tentative Order

Dear Mr. Wolfe:

Thank you for the opportunity to submit comments on the Regional Water Quality Control Board's Municipal Regional Permit (MRP) Revised Tentative Order (TO) dated February 11, 2009. These comments are a collaborative effort from the various departments within Santa Clara County ("County"). For almost twenty years, the various County departments have been involved in the implementation and enforcement of the County's municipal stormwater pollution prevention and control program and have been focusing on local and regional challenges and opportunities for improving the quality of urban runoff. During these twenty years the County has also been an active member in the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP). Through our joint efforts, SCVURPPP has received numerous local, state and national awards for our leadership and efforts to manage and minimize storm water related impacts on water quality.

The County has worked, through SCVURPPP, with Water Board staff over the past four years to develop a regional permit with the goal of achieving consistent municipal performance throughout the Bay Area and adding some additional requirements to address pollutants of concern (POCs). With these main goals in mind, we request that this permit account for the current economic downturn and consider the most cost-effective measures to fulfill the base stormwater management measure requirements, thus focusing on the following priority areas:

1. Consistent and cost-effective implementation of current performance standards;
2. Phased-in implementation of measures consistent with currently adopted pesticides, mercury and PCB TMDLs;
3. Focused and cost-effective efforts to address trash in or likely to be conveyed by stormwater in our waterways, with assessment work and data analysis informing the nature and location of the measures implemented; and,
4. Limited and cost-effective monitoring linked to relevant management questions.

We appreciate that the Water Board staff incorporated our comments on allowing more flexibility in implementation towards stated goals and outcomes for the standard operation components of the permit (i.e. sections C.2, C.4, C.5 and C.6). However, some of our concerns were not addressed and still remain a concern. For example, establishing priorities among pollutant of concern (POC) control programs and monitoring and phasing-in requirements over several permit cycles were not addressed in the Revised TO.

Board of Supervisors: Donald F. Gage, George M. Shirakawa, Dave Cortese, Ken Yeager, Liz Kniss
Acting County Executive: Gary A. Graves

General Comments and Concerns

The Revised TO has several new requirements and programs that will require a significant amount of funding. Currently, providing adequate funding for our existing stormwater quality program is difficult and during this critical financial time securing any additional funds creates a very real and serious fiscal challenge for the County. We have limited options to help offset the cost of implementing a stormwater quality program. The passage of Proposition 218, which requires a 2/3 majority vote to pass certain new fees or taxes, severely limits the County's ability to levy new taxes to pay for the stormwater quality program. And the current and deepening recession, which is expected to take years to recover from, significantly precludes the County's ability to consider imposing new fees and taxes to fund any new program requirements.

The County has been enrolled in the NPDES Storm Water Phase I Permit for almost 20 years. During this time, the requirements and scope of the stormwater quality programs have significantly increased from simply developing stormwater management programs as envisioned in USEPA's regulations. As a result, program costs for compliance with the NPDES Permit have also increased. Like your agency, the County is faced with having to make major cuts in staff and services. Potential funding for stormwater quality, such as the State's Proposition 84 Storm Water Grant Program, which Water Board staff have indicated as the way to fund many of the new MRP requirements, are currently unavailable and we cannot be certain if these funds will ever be available to us. The Federal Government's American Recovery and Reinvestment Act of 2009 have diverted funding for local governments for new water-related projects to cover State obligations. No alternative funding sources are available to the County. Therefore, designing and adopting a permit with significant new costs, while cost and expenditures of every other aspect of government are being held at current levels or reduced, is not sound public policy. The Water Board must recognize and understand that all jurisdictions need an opportunity to successfully achieve permit compliance by allowing an adequate phase-in period to allow jurisdictions the possibility to secure additional funding; this is particularly applicable for Provisions C.11 and C.12.

Major Concerns about Specific Provisions

C.2 Municipal Maintenance

C.2.d Stormwater Pump Stations

We appreciate the changes the Water Board staff made to C.2.d to focus on the water quality problem of low dissolved oxygen in discharges from pump stations. However, this provision still presents issues for our maintenance crews, in particular the additional dry weather monitoring and post-stormwater inspection and cleanup activities.

The County has six pump stations. Four of these pump stations are to keep roadways from flooding and two are strictly groundwater stations that have no drain inlets. All of our pump stations pump ground water continuously all year long and have already been exempted from Discharge Prohibition A.1. Since our pump stations are primarily groundwater pump stations and are located under roadways, there will never be any water from urban runoff to sample during the dry season, only ground water. Because the County has both groundwater pump stations and surface water pump stations, we request clarification on which pump stations must meet the requirements of

C.2.d. We also request that pump stations where the primary purpose is to pump groundwater be exempted from these requirements.

The requirements of C.2.d will increase the workload for our maintenance crews, will require new equipment, and will require training. In general, our pump stations are designed with very limited access for cleaning, inspecting and entering. Our maintenance crews are not trained to work in confined spaces, per OSHA, and they are not trained to take samples. In addition, our maintenance crews are unfamiliar with the new equipment that is necessary to meet the requirements of C.2.d.

Finally, the requirement that all pump stations are inspected within the first business day following a storm event that results in a quarter inch of rain or more will interfere with other required obligations that the County must accomplish.

We request that this provision be modified to require inspection for pumps stations that are of significant (i.e. capacity of 10,000 gallons per minute) size only and that more time be allowed following a storm event to conduct inspections. Our maintenance crew has limited staff and other obligations that must be met in any given day. For this reason, we request at least five workdays to complete inspections.

C.3 New Development and Redevelopment

We appreciate the efforts of the Water Board staff to address some of the comments we provided on Provision C.3. However, we continue to have the following major concerns about other revisions to C.3:

C.3.b.ii.4 New Road Projects

Under this section of Provision C.3, any new construction or widening of existing roads/streets that creates 10,000 square feet of impervious surface will need to include sidewalks and bicycle lanes in stormwater treatment design. This requirement does not provide an incentive to construct sidewalk and bike lanes for greater pedestrian accessibility. Furthermore, including sidewalks and bike lanes in stormwater treatment design is difficult for in-fill projects that are already confined to limited space. The County requests sidewalks and bike lanes be excluded when designing stormwater treatment for all road projects. This is consistent with current requirements.

The requirement that construction of impervious trails greater than 10 feet wide or are creek-side are required to have stormwater treatment is burdensome. In general, trails drain to vegetation and do not have pollutants because very few vehicles travel on them. The requirement that BMPs be implemented for a trail may result in fewer trails being constructed. We request that trails be exempted from stormwater treatment requirements.

Finally, this section does not have a “50% rule” for widening of existing roads. Requiring the entire road rather than just the added impervious surface runoff to be treated creates a significant financial burden on the County. We request that this section be revised to include the same “50% rule” requirements that are found in Section C.3.b.ii.3 “Other Redevelopment Projects” and that the “50% rule” applies to that portion of the road where vehicles travel and not to sidewalks and bicycle lanes.

C.3.c.i.2 Site Design and Stormwater Treatment Requirements

This section of Provision C.3 has been significantly modified. However, requiring a certain requirement for which BMP must be used to treat stormwater runoff before others is problematic for the County. The County's land use planning jurisdiction is the unincorporated areas of the County. In some areas, there are onsite wastewater disposal systems, which rely on adequate unsaturated soil depth for proper operation. Requiring as much stormwater as possible to be directed towards vegetated areas will impact treatment provided by onsite wastewater disposal. During heavy rainfall the disposal field soil becomes saturated from the excess runoff and interferes with treatment. The section of Provision C.3 has imposed a specific requirement of which BMPs should be implemented first to treat stormwater runoff and in some cases this is not feasible in the County given the existence of onsite wastewater disposal systems which rely on adequate unsaturated soil depth for proper operation. For this reason, we request that this section be changed to allow more flexibility in BMP choice.

This provision also requires any project that uses a "vault-based treatment" system to treat storm water runoff to submit additional information and justification to the Water Board staff and in some cases requiring approval by the Water Board's Executive Office approval prior to final approval by the County. This revision limits the treatment options for a site, is likely to create unnecessary project delays, increases the County's planning staff workload, and interferes with the County's independent land use authority. This additional regulatory burden is not an acceptable change to the County's development project review process. We request this section be revised to state the goal of limiting the use of vault-based systems, specify when they can be used, and request notification of the use of these systems in the annual report only.

C.3.e Alternative Compliance

This section of Provision C.3 allows alternative compliance options for infill site development and redevelopment projects. The County is responsible for road improvements on County roads and expressways, both of which are constrained by existing rights-of-ways and limited treatment control options. The existing constraints on County roads and expressways make it more cost-effective to provide treatment at one site. For this reason, we request that alternative compliance be made available to all development projects, including new roads and road widening projects.

Effective Implementation Dates

Many of the requirements for provision C.3 have implementation dates that are "effective immediately" (for all Permittees except Vallejo). The County needs adequate time to implement the new requirements because we will need to revise ordinances, policies and procedures, update handbooks and guidance materials, and educate staff and project applicants about the changes. Since there are a significant amount of new requirements and changes for development, redevelopment projects and hydromodification (HM) projects, we request at least one year from the date the order takes effect to prepare to implement the new requirements. During this time the current requirements (except for the threshold change to 5,000 square feet for special land uses and the small project requirements, which have other specific implementation dates) would remain in effect.

C.4 Industrial and Commercial Site Control

C.4.c and C.5.b and C.6.b Enforcement Response Plan

Requiring all violations to be corrected before the next rain event, but not longer than 10 business days, is unrealistic. We request that more flexibility for correcting violations within a timely manner be provided.

C.5 Illicit Discharge Detection and Elimination

Section C.5.d--Control of Mobile Sources

Under the TO, mobile sources appear to require compliance by each Permittee. A mobile business is a business that is not fixed in any one particular jurisdiction. While the TO calls for a county-wide/regional collaboration with respect to discharge of pollutants from mobile sources, it still calls for a County developed program for mobile sources. The County's ability to oversee compliance and enforcement of mobile sources is difficult because mobile sources are not fixed in the County.

Section C.5.e--Collection System Screening--Municipal Separate Storm Sewer System (MS4) Map Availability

This section of Provision C.5 requires the County to make storm water sewer maps available to the public. Storm water sewer maps may be critical infrastructure information that is voluntarily submitted to the California Emergency Agency for use by that office, the information is exempt from disclosure under Cal. Gov't Code s 6254(ab). The revised TO does not acknowledge the limitations on the County (and other Permittees) to disclose such maps under the California Public Records Act.

C.6 Construction Site Control

C.6.b Enforcement Response Plan

We appreciate that the Water Board staff removed the more prescriptive requirements from the Enforcement Response Plan (ERP) requirements. This section, however, still contains overly burdensome and extensive reporting requirements, which have the potential to interfere with enforcement work of staff. The County is experiencing escalating enforcement actions for violations at construction sites. To develop and implement an ERP will take significant time, including time for legal review, revision of ordinances, and training staff on the new requirements. We request an extended deadline to develop and implement the ERP.

C.6.e.ii.4 Tracking

This section of Provision C.6 imposes excessive reporting and tracking requirements that are burdensome. The level of detail of the inspection reports and tracking reports are very prescriptive. For example, recording the inches of rain fallen since the last inspection is not feasible. The information sought in this Provision will vary between construction sites, is not readily available to inspectors, and is not relevant to the site's effective use of BMPs. The scheduling of inspections and follow up is time consuming for staff, taking away from their other obligations under the TO. This section must be revised to allow more flexibility.

C.8 Water Quality Monitoring

The new monitoring requirements have significantly increased from past requirements. Monitoring, in general, requires a considerable amount of resources including time, staff and funding. Additional monitoring will result in significant increases in program costs due to additional resource requirements. The monitoring requirements are: 1) not based on sound science; 2) too prescriptive to allow for adaptive monitoring or collaboration with other program efforts such as the Regional Monitoring Program for Water Quality (RMP); 3) not necessary (focused beyond pollutants subject to regulation under a federal permit); and, 4) not prioritized to allow monitoring resources to be devoted to the most pressing water quality issues.

We request that Water Board staff revise this section to address these deficiencies. In particular, we request the following revisions to be made to Provision C.8 in the Revised TO:

- Algae Bioassessment and Nutrients (table 8.1)- change requirements from conducting algae bioassessment and nutrient sampling and evaluation to design of a characterization study to be conducted in the next permit term.
- Long-term monitoring (C.8.d)- these requirements are also seen in C.8.f. To prevent duplicate sampling, remove this section and incorporate any additional monitoring to C.8.f, if necessary.
- Pollutants of Concern Monitoring (C.8.f)- add flexibility that will allow consistency with methodology agreed upon in the RMP's Small Tributaries Loading Strategy.

C.10 Trash Reduction

The County acknowledges the need to assess trash accumulation areas potentially associated with stormwater and the need for enhanced actions to reduce trash to our water bodies. The Revised TO requires the County to “achieve [Trash Action Level (TAL)] by July 1, 2012 at [our] hot spots, and then maintain at least that level”. The TO does not take into account that trash may be coming from an uncontrollable source and will most likely result in noncompliance during the permit cycle, despite our best efforts to seek compliance

C.10.a.ii Trash Hot Spot Selection

Under this section it states “Trash Hot Spots shall be at least 100 yards of creek length or 200 yards of shoreline length...” To prevent inconsistencies in the Revised TO, this sentence should be revised to use feet instead of yards.

C.10.a.iv- Trash Hot Spot Clean Up to Trash Action Level (TAL)

The SCVURPPP “Urban Optimal Level” includes more subjective metrics than simply a specific threshold of pieces of trash and this could potentially create inconsistencies among programs and cities. We request that the TAL number not be defined with the “Urban Optimal Level” but be based on the number of pieces of trash per 100 feet of creek. We also ask that there be some clarification that the TAL of “100 pieces of trash per 100 feet of creek” is a goal or a trigger for action, not a water quality objective or numeric effluent limitation.

C.10.viii-Trash Source Reduction

This section says if "...implementation of significant new, or implementation of existing legal measures to reduce trash and litter at the source by 2012 Annual Report will reduce the Permittee's trash capture installation requirements by 20%, upon approval by the Executive Officer." The revised TO will require the County to install 2 full capture devices. Under this section the revised TO states " [a]doption and implementation of significant new, or implementation of major existing legal measures to reduce trash and litter at the source by 2012 Annual Report will reduce the Permittee's trash capture installation requirements by 20%, upon approval by the Executive Officer." If the County gains Executive Officer approval we will still be required to install 2 full capture devices because 20% of 2 devices is only a fraction of a device. This 20% reduction in installation requirements is not an incentive for the County to reduce trash at the source. We request that this section be revised to clarify that Permittees will be relieved from installing a minimum of one full capture devices.

C.11 and C.12 Mercury and PCBs Control

The County recognizes that Mercury and PCB TMDLs have been adopted and we agree that we should prioritize implementing control measures for these pollutants. Since these two Provisions have some identical requirements we request them to be combined to prevent unnecessary duplication and inconsistencies.

These two Provisions contain program requirements that will require a significant expenditure of public dollars. To make this section more cost-effective, we request the following revisions:

- Conduct Pilot Projects to Evaluate On-Site Stormwater Treatment via Retrofit (C.11/C.12.e)- The purpose of this requirement is to gain knowledge on the effectiveness of retrofitting. Until we know how effective this process is, we request that the number of locations be reduced from 10 locations to 4 locations.
- Diversion of Dry Weather and First Flush Flows to POTWs (C.11/C.12.f)- This Section of Provision C.11.f and C.12.f requires a feasibility study to be conducted but does not explain what the study might indicate. From preliminary exploratory discussions, stormwater diversions to the sanitary system will create significant engineering, regulatory, financial, legal and institutional challenges. Therefore, we request that during this permit term a feasibility study be conducted and the findings of the study will determine, in future permit cycles, if we will need to implement dry weather and first flush diversions.

C.15 Exempted and Conditional Exempted Discharges

SCVURPPP commented in its February 29, 2008 letter that the draft MRP contained numerous new requirements associated with conditionally exempted discharges. SCVURPPP asked that the implementation of BMPs for certain types of discharge be flexible, scaled to the nature of the threat posed, and subject to a municipality's discretion to require as appropriate and necessary given the threat posed (and secondary to public health and safety issues). It is our understanding that SCVURPPP staff and BASMAA met with the Water Board staff to discuss this section. However, no changes to provision C.15 were made to address our concerns.

Our specific concerns include the following:

- Meeting all the requirements for tracking, monitoring and reporting requirements, especially for relatively minor discharges such as swimming pools and pump groundwater, will be overwhelming for the County.
- The monitoring requirements for pumped groundwater, foundation drains, crawl space pumped water and footing drains are overly burdensome, especially for these incidental discharges. We request that monitoring requirements be limited to large discharges that could potentially be contaminated.
- The monitoring and reporting requirements for planned, unplanned and emergency discharges of potable water are overly prescriptive. We request this section be modified to:
 - Clarify that Permittees are only responsible for monitoring discharges that they are responsible for and not discharges by potable water dischargers who are Permittees; and
 - Eliminate overly prescriptive record keeping and reporting that interferes with staff's capacity to respond to unplanned potable water discharges, and require monitoring only to the extent that time and resources allow and only where and when it is safe to do so.
- This provision needs substantial revision. We request that our current BMP-based program, based on SCVURPPPP Conditional Exempted Discharge Report submitted and approved by Water Board staff in 2000, be grandfathered and remain in full effect.

In conclusion, the revised TO continues to have many potentially new or significantly expanded requirements that: 1) are not mandated by law or reflected in USEPA-issued municipal stormwater permits; 2) will require a significant expenditure of public resources that are not available at the local level; and, 3) is unlikely to increase water quality benefits, except for some pollutants of concern (which still need modifying to reflect our funding capabilities). It is crucial that the MRP requirements are prioritized based on the threat to water quality and phased in over time based on a realistic assessment of current municipal resources and other burdens being placed on Bay Area cities, counties and special districts at this time.

Thank you for the opportunity to comment on the Revised TO. Please contact Clara Spaulding at (408) 299-5737 or email clara.spaulding@pln.sccgov.org if you have any questions.

Thank you,



Thomas P. Whisler, PE
 Manager
 Development Service Office
 DEPT. OF PLANNING AND DEVELOPMENT